

BILL NO.

B-77-10-18

RESOLUTION NO.

B-55-77

A RESOLUTION ratifying the action of the Fort Wayne Redevelopment Commission and approving an agreement for the construction and use of an off-street parking facility

WHEREAS, the Fort Wayne Redevelopment Commission adopted the Concept Plan for the Downtown Revitalization Program and Action Plan by Resolution No. 76-40 on November 8, 1976.

WHEREAS, the Common Council of the City of Fort Wayne approved said Concept Plan by Resolution No. 97-76 on December 14, 1976.

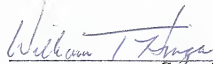
WHEREAS, the Common Council requested the Redevelopment Commission to proceed with further development of the projects in the Concept Plan and return to Council with reports on the status of projects.

WHEREAS, the Common Council of the City of Fort Wayne approved the Civic Center Redevelopment Project Plan for downtown Fort Wayne, which included provision for off-street parking by Resolution No. 46-77 on September 13, 1977.

WHEREAS, the Redevelopment Commission in the furtherance of and in conformity with said project plans to provide adequate off-street parking to facilitate the redevelopment and revitalization of downtown Fort Wayne, desires to report and presents to Common Council for review, a proposed agreement for the construction and use of an off-street parking facility.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

1. That the action of the Redevelopment Commission in proceeding with the development of an off-street parking facility for downtown Fort Wayne is ratified and approved.
2. That the proposed agreement for the construction of and use of the off-street parking facility has been reviewed and is approved.
3. That the Redevelopment Commission is requested by the Common Council to proceed with further development of the projects described in the said plans and return from time to time with reports on the status and progress of projects.



Councilman

APPROVED AS TO FORM
AND LEGALITY.


CITY CLERK

Read the first time in full and on motion by _____, seconded by

_____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: _____

CITY CLERK

Read the third time in full and on motion by _____ Hinga, seconded by V. Schmidt, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>✓</u>	_____	_____	_____	_____
<u>HUNTER</u>	<u>✓</u>	_____	_____	_____	_____
<u>MOSES</u>	<u>✓</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 10-11-77

Charles W. Whitman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

(ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE-

(RESOLUTION) No. B-55-77 on the 11th day of October, 1977.

ATTEST: (SEAL)

Charles W. Whitman
CITY CLERK

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of October, 1977, at the hour of 12:30 o'clock P. M., E.S.T.

Charles W. Whitman
CITY CLERK

Approved and signed by me this 13th day of October, 1977, at the hour of 11:00 o'clock _____ M., E.S.T.

Robert E. Chmichong
MAYOR

AGREEMENT

THIS AGREEMENT made and entered into by and between the FORT WAYNE REDEVELOPMENT COMMISSION, Party of the First Part (hereinafter referred to as "Commission"), and INDIANA & MICHIGAN ELECTRIC COMPANY AND PEOPLES TRUST BANK, Parties of the Second Part (hereinafter referred to individually as "I&M" and "PTB", respectively, and collectively, as the "Developers"),

WITNESSETH:

WHEREAS, the Commission has developed and adopted the Concept Plan for the Downtown Revitalization Program and Action Plan, which Concept Plan was subsequently approved by the Common Council of the City of Fort Wayne on December 14, 1976; and

WHEREAS, the Developers own substantial portions of real estate located within areas included in the Concept Plan and Downtown Revitalization Program and the Developers are desirous of undertaking the construction of a new multi-story office building complex of over 300,000 gross square feet to be known as One Summit Square on a portion of said real estate; and

WHEREAS, it is recognized by the Developers and the Commission that with the construction and development of One Summit Square, together with other downtown redevelopment, there will be a substantial increase in the demand for off street parking; and

WHEREAS, it is the desire of the Commission in the furtherance of its objective in the redevelopment and revitalization of the downtown area to provide adequate off street parking which will facilitate such redevelopment and revitalization.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. It is agreed that the block bounded by Jefferson Street, Calhoun Street, Washington Blvd. and Clinton Street (hereinafter referred to as "Parcel 1") shall be made available as the site for development by the Commission of multi-level off street parking facilities with an estimated potential capacity of approximately 900 to 1000 parking spaces. The Developers state that Parcel 1, with the exception of the Stuckey Brothers property and a tract owned by Walter York, is presently owned by them.

2. It is agreed that the development of the parking facilities shall proceed in phases, the first phase of such development being the construction of a 450 parking space multi-level garage on the north half of Parcel 1 (the "Facility").

The second phase of such development will be the construction of a second parking garage of approximately the same size on the south half of Parcel 1 which shall be constructed as the need develops as set forth in paragraph 14.

3. It is agreed by the Commission that it will gather and prepare the necessary data and other information precedent to and will then adopt a declaratory resolution, pursuant to the provisions of Section 18-7-7-12 of the Indiana Code, which shall contain a plan for the redevelopment of the north half of Parcel 1 for its use as a parking facility. The resolution shall be submitted to the Fort Wayne Plan Commission for its approval together with supporting data and information collected, including a proposal for the financing of the Commission's costs for implementation of construction of the Facility. The Commission agrees to use its best efforts to secure such approval and to secure approval of said resolution by the Common Council of the City of Fort Wayne. Upon receipt of an approving order of the Plan Commission together with the approval of the Common Council, the Commission shall then conduct a public hearing to determine the public utility and benefit of the Facility as required by the Indiana Code.

In the event no remonstrances or appeals are filed opposing said resolution and plan, the Commission shall proceed with the acquisition of the north half of Parcel 1.

In the event that the required approvals are not forthcoming despite the best efforts of the Commission, or in the event that an appeal is taken by any person against the adoption of the declaratory resolution by the Commission, and such Court sets aside the resolution or orders a modification so substantial in the determination of the Commission as to effectively prohibit the construction of the Facility, then the obligations of the parties to this Agreement shall cease and neither party shall have any claims against the other for damages or costs incurred.

4. In the event the Commission proceeds with the acquisition of the north half of Parcel 1, it shall engage the services of two competent M. A. I. appraisers whose professional qualifications will be of high standard. The appraisers shall give an opinion as to the fair market value of the property owned by the Developers on the north half of Parcel 1. It is agreed that the Developers will sell such property to the Commission and the Commission will pay an amount not less than the average of the two appraisals which shall be made subsequent to the date of this Agreement but prior to September 1, 1978.

5. It is agreed that at the time of acquisition of the Developer's property on the north half of Parcel 1 for construction of the Facility, I&M will grant an option to the Commission to purchase the property it owns on the south half of Parcel 1. The purchase price stated in said option will be the lesser of: (i) an amount established by appraisals made at the time of the purchase of the south half of Parcel 1 made in the manner described in 4 above; or, (ii) the amount established by appraisals made at the time the purchase contract covering the north half of Parcel 1 was executed, plus 8% compounded annually until date of purchase. Said option is to be exercisable within five years from the date of the purchase of the north half of Parcel 1.

6. The Commission/City of Fort Wayne shall finance the construction of the Facility. The construction contract covering the construction of the Facility shall specify a completion date which shall be the same as the completion date specified in the construction contract for One Summit Square. Prior to the request for construction bids the Commission agrees to review the conceptual plan and design of the Facility with the architects and designers of One Summit Square and to incorporate reasonable changes provided that, in the opinion of the Commission's architect and designer, such changes would not cause estimated construction costs plus reasonable contingencies to exceed \$2,025,000.

7. It is agreed and understood that the Facility will be owned and operated by the City of Fort Wayne.

8. The Commission, acting with the City of Fort Wayne, agrees to enter into individual leases with I&M and PTB for the rental of a total of 200 parking spaces for an initial term of thirty (30) years. Each lessee shall be individually responsible and the leases shall not contain any cross default provisions. The rental rate for the initial five years of the lease term shall be an amount of \$40.00 per month for 150 identified spaces for use during the working hours between 7:30 A.M. and 6:30 P.M. Monday through Friday and \$48.00 per month for 50 identified parking spaces for unlimited parking.

9. The parking leases shall grant the lessor the sole option of directing the lessees to lease additional numbers of parking spaces at the monthly rental of \$30. The lessor shall exercise its option once in any 12 month period by giving notice to lessees three months in advance of the number of such additional parking spaces to be leased for the following 12 calendar months. The notice shall identify such additional parking spaces which shall be for the sole use of the lessees during the hours of 7:30 A.M. to 6:30 P.M. Monday through Friday and shall be in blocks of 50 parking spaces. In the event the lessees do not have an immediate need for all of such additional parking spaces, they shall notify the lessor and the lessor shall then be able to rent such spaces to hourly transient users with the hourly transient rental from those spaces being credited to the account of the lessees. As between the lessees, the relative rights and obligations in this paragraph 9 shall be I&M-75% and PTB-25%.

10. Subsequent to the first five years of the initial thirty (30) year lease term, the rental rate may be subject to escalation on an annual basis to reflect the lessees' proportionate share of increases in expenses incurred by the City of Fort Wayne in the operation and maintenance of the Facility. Escalation shall be calculated from a mutually agreed to base which shall include 1) a designation of the number of personnel required to operate and maintain the Facility which number and wage rates shall be comparable to those of similar garages in Fort Wayne and 2) other annual operating and maintenance expenses. Escalation shall be computed annually as of January 1 following the first five years of operation (of which the first year may be partial operation) and shall be applicable for the ensuing calendar year. Escalation shall be limited to cost increases experienced by comparable commercial garage facilities in Fort Wayne unless otherwise agreed to by the parties hereto.

11. It is agreed that following the original thirty (30) year lease term, the Developers will have the right to renew the leases for a total of up to four consecutive five-year renewal periods. The annual rental rate per space for each renewal period will be negotiated using as a base fair market value opinions as established by three independent qualified appraisers and shall not exceed the rate charged by any comparable commercial parking structures serving office uses in the downtown area of the City of Fort Wayne.

12. It is agreed and understood by the Commission and the Developers that the Commission is considering provisions for opportunities for the development of retail/service space within the Facility along the Calhoun Street frontage on the ground floor level. Said retail/service space within the Facility shall have no financial impact upon the parking rental rates of the Developers.

13. It is agreed by the Commission that it will permit the Developers to construct a pedestrian bridge from the north face of the Facility into One Summit Square. It is agreed that the design and construction costs of any said pedestrian bridge shall be paid by the Developers.

14. It is agreed by the Commission and the Developers that following construction and operation of the Facility if revenues are sufficient to sustain operation of said Facility, and there exists a demand for additional off street parking, the Commission will undertake acquisition of the south half of Parcel 1, pursuant to and within the terms of its options as set forth in 5 above, and will develop additional off street parking and any other development it deems appropriate at that time on the south half of Parcel 1.

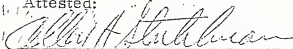
15. The Developers state that it is their intention to request construction bids specifying a construction start on or about March 1, 1978 for One Summit Square as soon as they receive a zoning variance and all other required approvals establishing 200 parking spaces located on Parcel 1 as meeting all zoning requirements for parking for One Summit Square. It is further agreed that once construction of One Summit Square is started provisions for parking must be

coordinated with the anticipated completion date of One Summit Square. Therefore, the parties agree that if the Commission, acting together with the City of Fort Wayne, does not sell bonds in an amount sufficient to purchase all of the north half of Parcel 1 and execute a purchase contract to purchase from the Developers the property they own on the north half of Parcel 1 on or before September 1, 1978, the obligations of the parties to this Agreement shall cease and neither party shall have any claim against the other for damages or costs incurred. Said purchase contract shall contain conditions which subject the right to purchase and the obligation to convey the north half of Parcel 1 owned by the Developers to the occurrence of both the obtaining through the sale of bonds or other means of an amount sufficient to cover all the costs of construction of the Facility and the execution of a contract for the construction of the Facility. It is further agreed that if the Commission or the City of Fort Wayne does not sell bonds or irrevocably appropriate or commit funds in an amount sufficient to cover the costs of construction of the Facility and award a construction contract on or before January 1, 1979 which specifies a completion date for the Facility which corresponds to the completion date of One Summit Square, the obligations of the parties to this Agreement shall cease and neither party shall have any claim against the other for damages or costs incurred.

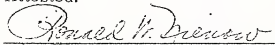
16. It is understood that this Agreement is entered into for the purpose of delineating the general obligations of the Commission and the Developers, and may be modified only in writing duly signed by the appropriate officers of each party to this Agreement. It is further understood that any legal instrument called for under the terms of this Agreement shall be satisfactory in form to counsel for each party hereto.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this _____ day of _____, 1977.

Attested:


Allen H. Stuhlmann, Asst. Secretary

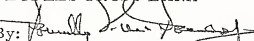
Attested:


Robert W. Hutner, Secretary

INDIANA & MICHIGAN ELECTRIC CO.

By: 
Jack F. Stark, Executive Vice President

PEOPLES TRUST BANK

By: 
Donnelly P. McDonald, President

FORT WAYNE REDEVELOPMENT
COMMISSION

Attested:

Robert W. Hutner, Secretary

By: _____
Leonard M. Weinraub, President